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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,190	02/07/2002	Rene Amherd	FELD-129XX	3763
207	7590	02/09/2004	EXAMINER	
WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP TEN POST OFFICE SQUARE BOSTON, MA 02109			KRECK, JOHN J	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 02/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/072,190

Applicant(s)

AMHERD, RENE

Examiner

John Kreck

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6-11, 13-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4, 6-9, 13-15 and 17-20 is/are rejected.
- 7) ☒ Claim(s) 10 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

The amendment dated 8/6/03 has been entered.

Claims 1-4, 6-11, 13-15, and 17-20 are pending.

1. Applicant's election with traverse of claims 4, 6-11, 13-15, and 17-20 in Paper No. 8 is acknowledged. The traversal is on the ground(s) that there is no burden on the examiner. This is not found persuasive because the process claims include limitations (e.g. the radioactive surface) which are not required by the claimed apparatus; therefore the search for the process is not required for the apparatus.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-3 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

### ***Claim Objections***

2. Claim 4 is objected to because of the following informalities: the claim lists the several chambers (e.g. suction, collection, etc..) in alternative or Markush format. Since dependent claims apparently require several or all of these chambers; claim 4 is interpreted as if it specifically requires each of these several chambers. The claim should be amended to eliminate the Markush format. Appropriate correction is required.

3. Claim 20 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is

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required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 20 includes no limitations which are not found in claim 4.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4, 6-9, 13-15, 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ikeda (U.S. Patent number 4,594,759) in view of Aulson, et al. (U.S. Patent number 5,267,382).

Ikeda (see figure 3) shows a device for mechanical decontamination of contaminated surface (the intended-use limitations of radioactive contaminated concrete or masonry is given little weight as apparatus; it is clear that the Ikeda device is capable of such use) wherein the device comprises several pneumatically actuated striking tools (112), the tools arranged in a housing (88, 86, etc) with several chambers arranged one over the other such that each tool is in active communication with each chamber; the chambers comprising a pressurized air feed chamber (near 122); pressurized air expansion chamber (near 100); suction chamber (extending to 124); and a collecting chamber (generally within 118); wherein the tools are releasably connected to the

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pressurized air chamber and sealingly pass through arranged chambers. Ikeda fails to teach the collecting chamber sealed in an air-permeable manner.

Aulson shows a similar device which includes a circumferential skirt brush for sealing the collecting chamber in an air-permeable manner. It is apparent that the brush is advantageous because it allows for a flexible seal.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Ikeda device to have a circumferential skirt brush thus also having the collecting chamber sealed in an air-permeable manner, as shown by Aulson, and as called for in claim 4.

With regards to claim 6; Ikeda shows the collecting and suction chambers form a common chamber.

With regards to claim 7; Ikeda shows the pressurized air chamber at the top and collecting chamber at the bottom.

With regards to claim 8; Ikeda shows the air expansion chamber between the suction chamber (above) and the collecting chamber (below).

With regards to claim 9; Ikeda shows the air expansion chamber between the air feed chamber (above) and the common suction and collecting chamber (below)---note that the suction chamber (124) connects to the collecting chamber (118) generally within 120, which is below 100.

With regards to claim 13; Aulson shows the skirt.

With regards to claim 14; Aulson shows the brush.

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With regards to claim 15; Ikeda shows 104, which can be considered to be an overlapping clip, which can serve as a mounting via the bolt shown on the right of figure 3.

With regards to claim 17; Ikeda shows screw connections (to the right side of 104, and also immediately to the right of 122); alternatively, if it is deemed that the screws shown by Ikeda do not meet the claim limitations, then it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Ikeda device to have screw connections passing through the housing on the outside as called for in claim 17: official notice is taken of the fact that screws are well known to hold such components together, since they are easily removable, inexpensive, and reliable.

With regards to claim 18; Ikeda shows the chisel like bolts (112).

With regards to claim 19; Ikeda shows the pressurized air chamber at the top and collecting chamber at the bottom.

With regards to claim 20; Aulson shows the collecting chamber sealed in an air-permeable manner.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hoza, Barthod, Young, and Saulia are cited for showings of devices with multiple hammer assemblies.

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***Allowabl Subject Matt r***

6. Claims 11 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

7. Applicant's arguments filed 8/6/03 have been fully considered but they are not persuasive.

8. Applicant's arguments concerning the alleged deficiencies in the Ikeda reference are addressed by the statements of rejection above, where each element is identified. As noted above, applicant is correct that Ikeda fails to explicitly disclose the collecting chamber sealed in an air permeable manner. This is taught by Aulson.

9. With regards to applicant's arguments concerning the obviousness rejection; applicant has argued that Aulson shows bristles through which "air can leak out". It is noted that the claims call for "air-permeable". It is clear that air can be expected to leak through a permeable surface. It is further noted that the Aulson bristles are specifically designed to prevent the dust from leaking out.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. This application contains claims 1-3 drawn to an invention nonelected with traverse in Paper No. 8. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kreck whose telephone number is (703)308-2725. The examiner can normally be reached on M-F 5:30 am - 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703)308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
John Kreck  
Examiner  
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JJK